IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2016
DELIVERED ON : 18.02.2016

CORAM:
THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Writ Petition No.30628 of 2008

M.Periakkaruppan ... Petitioner

Vs.

1. Union of India
rep. by the Senior Divisional Engineer,
Co-ordination, Chennai Division,
Southern Railway.

2. The Sr. Divisional Personnel Officer,
Chennai Division, Southern Railway,
NGO Annexe, Park Town,
Chennai – 3.

3. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the order of the 3rd respondent made in O.A.No.751 of 2007 dated 08.07.2008 and to quash the same and to consequently direct the respondents to revise and refix the basic pay of the petitioner on his promotion to the post of Track Supervisor substantively with reference to the basic pay drawn by the petitioner as an adhoc Track Supervisor i.e. to restore petitioner's basic pay of Rs.5,250/- effective from 01.07.2006 and to pay the consequential arrears forthwith.

For Petitioner : Mr.L.Chandrakumar

For Respondents 1 & 2 : Mr.V.G.Suresh Kumar

O R D E R

S.VAIDYANATHAN,J.

Challenging the order dated 08.07.2008 passed by the 3rd respondent in O.A.No.751 of 2007 and for a consequential direction to the respondents to revise and refix his basic pay on his promotion to the post of Track Supervisor substantively with reference to the basic pay drawn by him as an adhoc Track Supervisor and to pay the consequential arrears forthwith, the petitioner has filed this Writ Petition.

2. According to the petitioner, he was initially engaged as an Extra Labour Reserve (for short 'ELR') and later was utilised as Direct Track Maintainer (for short 'DTM') as a stop gap arrangement with reference to paragraph 2007 of the Indian Railways Establishment Manual. While working as a Gangmate in the pay scale of Rs.3050-4590, the petitioner was temporarily transferred to the office of the Chief Project Manager/Gauge Conversion/I/Chennai, Egmore vide Office order No.M/P (W) 99/98, dated 18.06.1998. Thereby, the petitioner was engaged to discharge the duties of

Track Supervisors in the pay scale of Rs.4500-7000 effective from the year 2000 and continued till 2007. In the meantime, the petitioner was regularly promoted as Track Supervisor vide No.M/P1(W) 531/TR/SUP/Vol.II, dated 17.05.2006 and thereby posted in the office of the Senior Section Engineer/Permanent Way/Tambaram. The petitioner was relieved to carry out his transfer vide Letter No.P.676/GC/MS, dated 28.02.2007. On joining the office of the Senior Section Engineer/Permanent Way/Tambaram, the petitioner was served with a letter No.M/P1 (W) 531/TR/SUP/Vol.II, dated 16.08.2007, according to which the petitioner's basic pay was reduced, without adhering to the principles of natural justice. Hence, the petitioner preferred Original Application No.751 of 2007 before the Central Administrative Tribunal, Madras Bench.

3. In their reply statement, the respondents justified their refixation of the petitioner's basic pay on the ground that the petitioner was working as PW-I Maistry in the office of the Deputy Chief Engineer Gauge Conversion only on adhoc basis. According to the respondents, the petitioner's promotion in the regular line to the post of PW(M) in Madras Division is against 50% promotional quota. He had applied for the post because his lien was maintained in Madras Division as Trackmate in the pay

scale of Rs.3050-4590/-. Trackmate is feeder category for promotion to PW(M). He was relieved from the office of the Deputy Chief Engineer Gauge Conversion, Egmore on 28.02.2007 and he joined as PW (M) at Tambaram on 01.03.2007.

4. It is further stated by the respondents that the pay in respect of the petitioner was fixed at Rs.4,750/- in the pay scale of Rs.4,500-7,000/- with effect from 01.03.2007 with reference to his substantive post of Trackmate/Gangmate in the pay scale of Rs.3050-4590/-. The respondents contended that the pay received by the petitioner in the office of the Gauge Conversion, was only on adhoc basis and cannot be taken into account as the basis for fixation of his pay. Therefore, his pay was refixed vide letter dated 16.08.2007, as per Rules.

5. After hearing the learned counsel on either side, the Tribunal, by an order dated 08.07.2008 dismissed O.A.No.751 of 2007, with the following observation:

> "15. It is clear from the above discussions that an employee getting promoted to a higher level on adhoc basis while on deputation on reversion to the parent department is entitled to get his pay fixed on the basis of pay drawn by him in the substantive post in the parent

> department only. Hence, we do not see any ground to interfere with the orders passed by the second respondent in his letter No.M/P1(W) 531/TR/SUP/Vol.II, dated 16.08.2007. However, if any employee junior to the applicant in his parent department was promoted to the higher scale before the applicant's promotion on reversion to his parent department, the applicant is entitled to get his pay fixed at higher scale on proforma basis from the date on which his junior was promoted. With this observation, the O.A. is dismissed. No costs."

Seeking to quash the said order and for a consequential direction to the respondents, the petitioner has approached this Court.

6. Learned counsel for the petitioner would strenuously contend that the order passed by the Tribunal is *nonest* in law, as it is erroneous to reject the claim of the petitioner for fixation of pay on his returning back as a Track Supervisor on the pretext that the petitioner was holding an ex-cadre post. He would submit that the post of Track Supervisor held by the petitioner was not a Tenure post and the Tribunal has erred in holding that 'pay to be fixed on the basis of pay drawn by him in the substantive post in the parent department only', since Rule 1313 of FR 22(1)(a)(1) of the Indian Railways Establishment Code, enunciates fixation of pay to all the Railway Servants holding posts other than 'Tenure post'.

7. It is the further contention of the learned counsel for the petitioner that the petitioner has already retired from service and that his higher pay should be taken into account for the purpose of terminal benefits. In support of his case, learned counsel has relied on a Apex Court judgment in the case of **Badri Prasad and others v. Union of India (UOI) and others [2005 (11) SCC 304],** relevant portion of which would read thus:

> "11. It is not disputed that the appellants were made to work on the post, of Store man-cum-Clerk which is a higher post carrying higher scale of pay. They were made to work on that higher post not for a short period as a Stopgap arrangement but for a long period of more than ten years. It is on these facts that the appellants have raised their claim for being allowed to continue on the higher post and questioned drop of their emoluments."

8. In reply, learned counsel for the respondents/Railways would submit that when a Railway employee is promoted from one post to another post involving higher responsibility, his pay is fixed with reference to the pay received by him in the substantive capacity. Accordingly, the pay in respect of the petitioner was fixed based on the pay received by him in the post of Gangmate in the pay scale of Rs.3050-4590 and there is no provision

to fix the pay, based upon the pay received by him in the work charged post of Track Supervisor in the pay scale of Rs.4500-7000 and such promotion is not a regular promotion against a regular substantive post. It is his further submission that it is not as if the petitioner was continuing in service on adhoc basis till the date of his retirement. He was sent back to his parent department, where his services have been regularised and superannuated. That apart, he would contend that the petitioner cannot claim pension as a matter of right and though the decision in Badri Prasad's case was referred to by the petitioner even before the Tribunal, it was not helpful to him.

9. To substantiate his stand, learned counsel for the respondents/Railways has relied on a Supreme Court decision in the case of **Union of India and others v. Bhanwar Lal Mundan [(2013) 12 SCC 433],** relevant portion of which would read as under:

> "13. In State of Punjab and others v. Inder Singh and others[17], the learned Judges elaborately adverted to the concept of deputation and the right of a deputationist and in that context opined thus:-
>
> > "The concept of "deputation" is well understood in service law and has a recognised meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word "deputation" is of no help. In simple words "deputation" means service outside the cadre or outside the

> parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules."

> 14. In the case at hand, as stated earlier, the respondent was getting higher scale of pay in the post while he was holding a particular post as a deputationist. After his repatriation to the parent cadre on selection to a higher post he was given higher scale of pay as it was fixed keeping in view the pay scale drawn by him while he was working in the ex-cadre post. Such fixation of pay, needless to say, was erroneous and, therefore, the authorities were within their domain to rectify the same. Thus analysed, the irresistible conclusion is that the tribunal and the High Court have fallen into error by opining that the respondent would be entitled to get the pension on the basis of the pay drawn by him before his retirement. "

10. We have heard the learned counsel on either side and carefully gone through the materials available on record.

11. For the sake of convenience, Rule 1313 Vol. II of the Indian Railway Establishment Code is extracted below:

> "Notwithstanding anything contained in this rule, where a railway servant holding an ex cadre post is promoted or appointed regularly to a post in his cadre, his pay in the cadre post will be fixed only with reference to his presumptive pay in the cadre post which he would have held but for his holding any

> ex-cadre post outside the ordinary line of service by virtue of which he becomes eligible for such promotion or appointment."

12. The contention of the petitioner that he was substantially promoted as Track Supervisor and continuously working as Track Supervisor in the Construction Unit and is entitled to have his pay fixed on ex-cadre basis and get higher emoluments and pay, cannot be accepted.

13. It is seen that the petitioner joined the services of the Southern Railway as ELR Khalasi and was appointed on regular basis as Gangmate in Madurai Division in the Open line, when he was holding the post of PWI – I Grade II. He was deputed to Kongan Railway Corporation and was appointed as PWI Grade-I from 20.06.1995. On 01.04.1999, he was repatriated to Southern Railway and posted as Supervisor (Works) in Madurai Division in the pay scale of Rs.4500-7000/-. He represented to the Chief Personnel Officer to give him pay protection in the pay scale Rs.4500-7000 at Rs.5250/-, as he was a substantive holder of the post of Supervisor (Works). His request was not conceded and the petitioner was reverted as Gangmate in the pay scale of Rs.3050-4590/- by taking into account his seniority in the substantive post.

14. It is not in dispute that the promotions earned by the petitioner were adhoc promotions and one of the documents filed by the petitioner before the Tribunal would clearly show that the petitioner's promotions were only on adhoc basis in the interest of the administration and the said adhoc promotions do not confer any right on the petitioner in claiming regular seniority over his seniors.

15. Reference made by the petitioner to the Apex Court judgment in **Badri Prasad's** case will not be applicable to the facts of this case, as, in the present case, the petitioner has been sent back to his parent department and reverted as Gangmate, taking into account his seniority in the substantial post. When the petitioner's lien is maintained in the parent department, his adhoc promotions will not give him any right to get promotion or any other benefit.

16. In view of the above discussion, we find no merits to interfere with the order passed by the Tribunal and grant the relief sought by the petitioner. **Hence, this Writ Petition is liable to be rejected and it is accordingly dismissed.** However, this Court makes it clear that the observation made by Tribunal in paragraph 15 of its order, “if any employee

junior to the applicant in his parent department was promoted to the higher scale before the applicant's promotion on reversion to his parent department, the applicant is entitled to get his pay fixed at higher scale on proforma basis from the date on which his junior was promoted" is not interfered by this Court.

No costs.

[R.S.,J.] [S.V.N.,J.]

18.02.2016

Index : Yes/No

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To :

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   rep. By The Senior Divisional Engineer,
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2. The Sr. Divisional Personnel Officer,
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3. The Registrar,
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R.SUDHAKAR,J.
AND
S.VAIDYANATHAN,J.

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Pre-delivery Order in
W.P.No.30628 of 2008

Dated: 18.02.2016